

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHRISTOPHER SYPOLT, on behalf of himself)
and all others similarly situated,)
Plaintiff,)
v.)
THE TALON GROUP, a division of First)
American Title Insurance Company, a foreign)
corporation,)
Defendant.)
No. CV07-1892 MJP
PUTATIVE CLASS ACTION
RULE 29 STIPULATION AND
ORDER REGARDING
DISCOVERY

Pursuant to Fed. R. Civ. P. 29 and in the interest of efficiency and judicial economy, particularly in the interest of avoiding significant ancillary litigation of discovery issues relating to confidential commercial and/or proprietary information, Plaintiff Christopher Sypolt and Defendant The Talon Group, a division of First American Title Insurance Company, do hereby stipulate and agree to this protective order and the procedures set forth herein for designating and protecting confidential commercial and/or proprietary information. Plaintiff and Defendant stipulate as follows:

1. The disclosing party who designates any material “CONFIDENTIAL” bears the burden of establishing the “CONFIDENTIAL” status of such material in any situation in which the designation is at issue, and nothing in this Order shall be construed to alter such

**RULE 29 STIPULATION AND ORDER
(CV 07-1892 MJP)**

1

Davis Wright Tremaine LLP
LAW OFFICES
100 Century Square • 1501 Fourth Avenue
Seattle, Washington 98101-1688
(206) 622-3150 • Fax: (206) 628-7699

1 burden. This Order is stipulated to and entered without prejudice to the rights of any party to
2 assert or contest the "CONFIDENTIAL" status of any material as set forth herein.

3 2. This Order shall apply to and govern all depositions, documents, information
4 or things produced in response to requests for production of documents, answers to
5 interrogatories, responses to requests for admissions and all other discovery taken under the
6 Federal Rules of Civil Procedure, and other information which the disclosing party designates
7 as "CONFIDENTIAL" hereafter furnished, directly or indirectly, by or on behalf of any party
8 or any non-party in connection with this action. As used herein, "disclosing party" shall refer
9 to the parties to this action or to non-parties who give testimony or produce documents or
10 other material.

11 3. The following material may be designated as "CONFIDENTIAL": any trade
12 secret or other confidential research, design, development, financial, or commercial
13 information, as such terms are used in Rule 26(c)(7) and any applicable case law interpreting
14 Rule 26(c)(7), contained in any document, discovery response or testimony.

15 4. In designating material as "CONFIDENTIAL," a disclosing party or non-party
16 shall make such a designation only as to material which it in good faith believes is
17 confidential. A party receiving material designated as "CONFIDENTIAL" by the producing
18 party or non-party shall use that material solely for the purpose of conducting this litigation
19 but not for any other purpose whatsoever.

20 5. In the absence of written permission from the disclosing party or non-party, or
21 an order of the Court, material designated as "CONFIDENTIAL" may be disclosed by the
22 parties only to the following persons:

23 (a) The attorneys working on this action on behalf of any party, including in-house
24 attorneys, paralegals, and staff, stenographic and clerical employees and contractors working
25 under the direct supervision of such counsel;

1 (b) Any expert or consultant who is expressly retained or sought to be retained by
 2 any attorney described in paragraph 5(a) to assist in preparation of this action for trial or for
 3 motions, with disclosure only to the extent reasonably necessary to perform such work;

4 (c) Any person from whom testimony is taken, except that such person (i) may be
 5 shown copies of "CONFIDENTIAL" material only in preparation for and during her/his
 6 testimony if it relates to his/her testimony (relevance will be determined in good faith by
 7 counsel preparing the deponent), and (ii) may not retain any "CONFIDENTIAL" material;

8 (d) The Court, jury, court personnel, court reporters, and other persons connected
 9 with the Court; and

10 (e) An individual named plaintiff, with disclosure only to the extent reasonably
 11 necessary for the individual named plaintiff's participation in the case as determined in good
 12 faith by plaintiffs' counsel.

13 6. The persons described in paragraph 5(b), 5(c), and 5(e) shall have access to the
 14 "CONFIDENTIAL" material only after they have been made aware of the provisions of this
 15 Order and have manifested their assent to be bound thereby by signing a copy of the annexed
 16 "ACKNOWLEDGMENT." The persons receiving "CONFIDENTIAL" material are enjoined
 17 from disclosing that material to any other person, except in conformance with this Order.
 18 This paragraph does not apply when a party in good faith seeks to use a "CONFIDENTIAL"
 19 document at a deposition of a deponent who has not already signed the
 20 ACKNOWLEDGMENT, in which case, the party's obligation shall be to sincerely ask the
 21 deponent to sign the ACKNOWLEDGMENT, but the party's right to proceed with the
 22 deposition and to use "CONFIDENTIAL" material at the deposition shall not depend on the
 23 deponent's willingness to do so. In the event a deponent being shown "CONFIDENTIAL"
 24 material refuses to sign the ACKNOWLEDGEMENT, the deponent shall not be permitted to
 25 retain, reproduce, or copy all or any part of the "CONFIDENTIAL" material.

1 7. A list shall be maintained by counsel for the parties hereto of the names of all
2 persons (except for counsel and their support personnel) to whom any "CONFIDENTIAL"
3 material is disclosed, or to whom the information contained therein is disclosed, and such list
4 shall be available for inspection by the Court or opposing counsel upon request, and with a
5 good faith belief that this Order has been violated, except that a party or a party's counsel
6 shall not be required to identify by name a consulting expert except as otherwise provided by
7 the Federal Rules of Civil Procedure. Upon request made within sixty (60) days of the
8 termination of this lawsuit by settlement, final judgment or otherwise, including final
9 appellate action or the expiration of time to appeal or seek further review, the parties shall
10 provide opposing counsel with a copy of the aforementioned lists, except that a party or a
11 party's counsel shall not be required to identify by name a consulting expert except as
12 otherwise provided by the Federal Rules of Civil Procedure, provided, however, that upon a
13 showing by a disclosing party of a good faith basis for believing that this Order has been
14 violated, a party shall be required to disclose whether any consulting expert has been given
15 access to "CONFIDENTIAL" material of the type or category of "CONFIDENTIAL"
16 material involved in the alleged or suspected breach.

17 8. Each individual who receives any "CONFIDENTIAL" material hereby agrees
18 to subject himself/herself to the jurisdiction of this Court for the purpose of any proceedings
19 relating to the performance under, compliance with or violation of this Order.

20 9. The recipient of any "CONFIDENTIAL" material that is provided under this
21 Order shall maintain such material in a secure and safe area and shall exercise the same
22 standard of due and proper care with respect to the storage, custody, use and/or dissemination
23 of such material as is exercised by the recipient with respect to its own proprietary material.
24 "CONFIDENTIAL" material shall not be copied, reproduced, summarized, extracted or
25 abstracted, except to the extent that such copying, reproduction, summarization, extraction or
26 abstraction is reasonably necessary for the conduct of this lawsuit. All such copies,

1 reproductions, summarizations, extractions, and abstractions shall be subject to the terms of
 2 the Order and labeled in the same manner as the designated material on which they are based.

3 10. Disclosing parties or non-parties shall designate "CONFIDENTIAL" material
 4 as follows:

5 (a) In the case of documents, interrogatory answers, responses to requests to
 6 admit, and the information contained therein, designation shall be made by placing the
 7 following legend on every page of any such document before production:
 8 "CONFIDENTIAL." In the event that a party or non-party inadvertently fails to stamp or
 9 otherwise designate a document or other material as "CONFIDENTIAL" at the time of its
 10 production, that party or non-party may at any time thereafter stamp or otherwise designate
 11 the document or other material as "CONFIDENTIAL." The delay in designating a document
 12 as "CONFIDENTIAL" shall not, in and of itself, be deemed to have effected a waiver of any
 13 of the protections of this Order, but such document or other material shall be treated as
 14 "CONFIDENTIAL" only beginning at the time such designation occurs.

15 (b) "CONFIDENTIAL" material may be used in depositions. Designation of the
 16 portion of the deposition transcript (including exhibits) which contains "CONFIDENTIAL"
 17 material shall be made by a statement to such effect on the record in the course of the
 18 deposition or, upon review of such transcript, by counsel for the party or non-party to whose
 19 "CONFIDENTIAL" material the deponent has had access, which counsel shall so designate
 20 within fourteen (14) days after counsel's receipt of the transcript. During those fourteen days,
 21 the entire deposition transcript, including exhibits, shall be deemed "CONFIDENTIAL."

22 (c) Any "CONFIDENTIAL" material produced in a non-paper media (e.g.,
 23 videotape, audiotape, computer disk, etc.) may be designated as such by labeling the outside
 24 of such non-paper media as "CONFIDENTIAL" and producing this material in a sealed
 25 envelope. In the event a receiving party generates any electronic copy, "hard copy,"
 26 transcription, or printout from any such designated non-paper media, such party must treat

1 each copy, transcription, or printout as designated and label it in a manner effective to ensure
2 proper treatment.

3 11. A party shall not be obligated to challenge the propriety of a
4 “CONFIDENTIAL” designation at the time made, and failure to do so shall not preclude a
5 subsequent challenge thereto at any time during the course of this litigation. In the event that
6 any party to this litigation disagrees at any stage of these proceedings with such designation,
7 such party shall provide to the producing party or non-party written notice of its disagreement
8 with the designation. The parties (and any non-party involved) shall first try to resolve such
9 dispute in good faith on an informal basis consistent with the requirement to confer in good
10 faith under Rules 26(c) and 37(a)(2)(A)-(B). If the dispute cannot be resolved, the party or
11 non-party making the designation may request appropriate relief from the Court. Provided the
12 party making the designation seeks relief from the Court within thirty (30) days of receiving a
13 notice of disagreement, the materials in question shall retain their “CONFIDENTIAL” status
14 until the Court rules on any such motion. The party making the designation may request a
15 telephonic hearing with respect to the “CONFIDENTIAL” status of materials in compliance
16 with Local Rule 7(i). Nothing in this Order shall alter the burden of the disclosing party of
17 establishing the “CONFIDENTIAL” status of materials.

18 12. Documents containing “CONFIDENTIAL” material shall not be filed with the
19 Court unless it is reasonably necessary to do so for purposes of trial, motions (including
20 without limitation, motions for class certification, preliminary injunction or summary
21 judgment) or other Court matters. The filing party shall take all reasonable steps to file
22 “CONFIDENTIAL” material under seal in compliance with Rule 26(c)(7) and Local Rule
23 5(g).

24 13. If a party wishes to use “CONFIDENTIAL” material to support or oppose a
25 motion or at trial, the following procedures shall apply:

1 (a) The party submitting the material shall submit to the Court a motion to seal
2 pursuant to CR 5(g)(2) contemporaneous with the filing of the “CONFIDENTIAL” material
3 and shall adhere to all requirements in CR 5(g)(3) for filing such material under seal.

4 (b) If the disclosing party or non-party is not the party filing the motion to seal,
5 then the disclosing party or non-party shall make the showing required by CR 5(g) in its
6 response to the motion.

7 (c) Any motion to seal filed under any subsection of this Paragraph 13 shall be
8 noted for consideration not less than fifteen (15) judicial days after filing. The Clerk of the
9 Court shall maintain the “CONFIDENTIAL” materials under seal until the Court rules on the
10 motion to seal, subject to the provisions of the following Paragraph.

11 14. In the event the Court denies a motion to seal documents labeled
12 “CONFIDENTIAL,” the Clerk of the Court shall leave the documents under seal for a period
13 of three (3) judicial days after the date of the Court’s denial of the motion to seal. If the filing
14 party initially designated the documents “CONFIDENTIAL,” then within that three (3) day
15 period, the filing party may, at its option, file replacement documents that do not contain
16 “CONFIDENTIAL” material, in which case the documents initially filed under seal shall be
17 returned to the filing party and not be considered by the Court. If the filing party does not file
18 replacement documents within the time period prescribed by this Paragraph, the material shall
19 be filed unsealed in the Court file.

20 15. In the event that any “CONFIDENTIAL” material is used in any Court
21 proceeding in connection with this litigation, it shall not lose its “CONFIDENTIAL” status
22 through such use, and the parties shall take all steps reasonably required to protect its
23 confidentiality during such use.

24 16. If “CONFIDENTIAL” material is disclosed to any person other than in the
25 manner authorized by this Order, the person or party responsible for the disclosure must
26 seasonably bring all pertinent facts relating to such disclosure to the attention of counsel for

1 the designating party or non-party and, without prejudice to any other rights and remedies of
2 the parties or non-parties, make every effort to prevent further disclosure by it or by the
3 person who was the recipient of such material.

4 17. Nothing in this Order shall preclude any parties or non-parties to the lawsuit or
5 their attorneys (a) from showing a document designated as "CONFIDENTIAL" to an
6 individual who either prepared the document or is identified on the face of the document as an
7 addressee or copy addressee, or (b) from disclosing or using, in any manner or for any
8 purpose, any material or documents from the party's or non-party's own files which the party
9 or non-party itself has designated as "CONFIDENTIAL."

10 18. In the event any receiving party having possession, custody or control of any
11 "CONFIDENTIAL" material receives a subpoena, request for production of documents, or
12 other process or order to produce such material in another, unrelated legal proceeding, from a
13 non-party to this action, such receiving party shall (1) give notice of the subpoena, request for
14 production of documents, or other process or order to counsel for the disclosing party or non-
15 party that designated the material as "CONFIDENTIAL," (2) furnish counsel for that
16 disclosing party or non-party with a copy of said subpoena, request for production of
17 documents, or other process or order, and (3) cooperate with respect to all reasonable and
18 legitimate procedures sought to be pursued by the disclosing party or non-party whose
19 interests may be affected. The disclosing party or non-party asserting the
20 "CONFIDENTIAL" treatment shall have the burden of defending against such subpoena,
21 process or order. The party receiving the subpoena, request for production of documents, or
22 other process or order shall be entitled to comply with it except to the extent the disclosing
23 party or non-party asserting the "CONFIDENTIAL" treatment is successful in obtaining an
24 order modifying or quashing the subpoena, request for production of documents, or other
25 process or order.

1 19. The inadvertent production in the course of discovery in this action of any
2 document or material (whether designated as "CONFIDENTIAL" or not) shall not be deemed
3 to waive whatever attorney-client privilege, work product protection or other privilege or
4 immunity that would otherwise attach to the document or material produced or to other
5 documents or material, as long as the disclosing party or non-party, promptly after discovery,
6 notifies the other party or parties of the claim of privilege or other protection or immunity.
7 Upon such notice, the other party or parties shall promptly destroy all copies of the documents
8 or material referred to in such party's or parties' possession, custody, or control, and notify
9 the disclosing party or non-party that it has done so, and shall notify the disclosing party or
10 non-party of any other persons to whom the document has been provided and take reasonable
11 steps to retrieve it from such persons consistent with Rule 26(b)(5)(B). Such destruction and
12 notice shall not constitute an acknowledgment that the claimed document or material is in fact
13 privileged or entitled to protection or immunity.

14 20. Within sixty (60) days of the termination of litigation between the parties,
15 including final appellate action or the expiration of time to appeal or seek further review, all
16 "CONFIDENTIAL" material and all copies thereof shall be returned to the disclosing party or
17 non-party or shall be destroyed. If destroyed, counsel shall certify the destruction and provide
18 a copy of the certification to the producing party or non-party. Counsel for each party shall be
19 entitled to retain all pleadings, motion papers, legal memoranda, correspondence and work
20 product.

21 21. Except as specifically provided herein, the terms, conditions, and limitations of
22 this Order shall survive the termination of this action.

23 22. This Order is without prejudice to the right of any party or non-party to seek
24 relief from the Court from any of the provisions contained herein.

25 23. This Order shall not be construed as waiving any right to assert a claim of
26 privilege, relevance, overbreadth, burdensomeness or other grounds for not producing

1 material called for, and access to all material (whether designated as "CONFIDENTIAL" or
2 not) shall be only as provided by the discovery rules and other applicable law.

3 DATED this 14th day of March, 2008.

4 HAGENS BERMAN SOBOL SHAPIRO LLP

5 By /s/ Tyler S. Weaver

6 Steve W. Berman, WSBA #12536
7 Sean R. Matt, WSBA #21972
8 Tyler S. Weaver, WSBA #29413
9 1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
Telephone: (206) 623-7292
Fax: (206) 623-0594
E-mail: steve@hbsslaw.com

10 Timothy J. Warzecha, WSBA #28890
11 LAW OFFICES OF TIMOTHY J.
12 WARZECHA, PLLC
13 719 Second Avenue, Suite 104
Seattle, Washington 98104-1748
Telephone: (206) 264-0282
Fax: (206) 262-9272
Email: warzecha@warszecha-law.com

14
15 Attorneys for Plaintiff

16
17 DAVIS WRIGHT TREMAINE LLP

18
19 By /s/ Stephen M. Rummage

20 Stephen M. Rummage, WSBA #11168
21 Cassandra Kinkead, WSBA #22845
Jonathan M. Lloyd, WSBA #37413
22 Suite 2200, 1201 Third Avenue
Seattle, WA 98101-3045
Telephone: (206) 622-3150
Fax: (206) 757-7700
E-mail: steverummage@dwt.com

23
24 Attorneys for Defendant

ORDER

IT IS SO ORDERED.

Dated this 18th day of March, 2008.

/s Marsha J. Pechman
The Honorable Marsha J. Pechman
United States District Judge

ACKNOWLEDGMENT

The undersigned hereby acknowledges that he/she has read the PROTECTIVE ORDER, which was entered by the Court on _____ in *Sybolt v. The Talon Group*, U.S. District Court, Western District of Washington at Seattle, Case No. C07-1892 MJP; that he/she is one of the persons contemplated in paragraph 5 thereof as authorized to receive disclosure of material designated “CONFIDENTIAL” by one of the parties or by non-parties; and that he/she has read and fully understands and agrees to abide by the obligations and conditions of the Protective Order.

(Signature)

(Printed Name)

(Title or Position)

(Company)

Dated: _____

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2008, I electronically filed the foregoing [Proposed] Rule 29 Stipulation and Order Regarding Discovery with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Steve W. Berman: steve@hbsslaw.com
Sean R. Matt: sean@hbsslaw.com
Tyler S. Weaver: tyler@hbsslaw.com
Timothy J. Warzecha: warzecha@warszecha-law.com

DATED this 14th day of March, 2008.

Davis Wright Tremaine LLP
Attorneys for Defendant
The Talon Group

By /s/ Jonathan M. Lloyd

Jonathan M. Lloyd, WSBA #37413
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
Telephone: (206) 622-3150
Fax: (206) 757-7700
E-mail: jonathanlloyd@dwt.com